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13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **San Francisco Division**  
16

17  
18 IN RE LUMINENT MORTGAGE CAPITAL,  
INC., SECURITIES LITIGATION  
19

No. C-07-04073-PJH

**CLASS ACTION**

20 **NOTICE OF MOTION AND**  
21 **MEMORANDUM OF POINTS AND**  
22 **AUTHORITIES IN SUPPORT OF THE**  
23 **MOTION OF THE SHARENOW**  
**GROUP TO APPOINT LEAD**  
**PLAINTIFF AND LEAD COUNSEL**

24 Date: November 21, 2007  
25 Time: 9:00 a.m.  
26 Judge: Honorable Phyllis J. Hamilton  
27 Courtroom: 3, 17th Floor  
28

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on November 21, 2007 at 9:00 a.m., or as soon thereafter as this matter may be heard in the courtroom of The Honorable Phyllis J. Hamilton, located at Courtroom 3, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102, Movants Joel Sharenow, Bradley Burns and Rajiv Kumar Prasad (the "Sharenow Group") will move this Court pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), for an Order:

1. Appointing the Sharenow Group as Lead Plaintiffs for a class ( the "Class") of investors in the publicly traded securities of Luminent Mortgage Capital, Inc., ("Luminent" or the "Company"); and

2. Approving the Sharenow Group's selection of Gardy & Notis, LLP and Faruqi & Faruqi, LLP as Lead Counsel for the Class and Audet & Partners, LLP as Liaison Counsel for the Class.

**MEMORANDUM OF POINTS AND AUTHORITIES**

This is a consolidated class action lawsuit (the "Action") brought on behalf of all those who purchased or otherwise acquired Luminent Mortgage Capital, Inc. ("Luminent" or the "Company") shares between October 10, 2006 and August 6, 2007, inclusive (the "Class Period"),<sup>1</sup> alleging violations of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA") and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

<sup>1</sup> Although the various complaints allege different Class Periods, for the purposes of this motion, the relevant Class Period is the longest period alleged in the complaints.

1 The Sharenow Group hereby moves this Court for an Order to: (i) appoint the Sharenow  
 2 Group as Lead Plaintiff in the Action under Section 21D of the Exchange Act; and (ii) approve  
 3 the Sharenow Group's selection of Counsel.

4 The Sharenow Group respectfully submits that its members are the most adequate  
 5 plaintiffs to represent the Class of investors in Luminent securities, as the group has suffered  
 6 significant losses as a result of defendants' wrongful conduct.<sup>2</sup> The group's losses, while  
 7 perhaps lower than losses of other large institutional investors, are significant losses for  
 8 individual investors like the Sharenow Group, such that the Class would best be served by  
 9 including the Sharenow Group as lead plaintiffs. Indeed, the Sharenow Group also satisfies the  
 10 requirements of Fed. R. Civ. P. 23(a), as its claims are typical of the other members of the  
 11 proposed Class, and it will fairly and adequately represent the Class. Finally, the Sharenow  
 12 Group has selected law firms with substantial experience in prosecuting securities fraud class  
 13 actions to serve as Lead and Liaison Counsel for the Class.

14 This Motion is based on the notice of motion, the memorandum of points and  
 15 authorities in support thereof, the accompanying Declaration of James S. Notis, the pleadings  
 16 and other files herein and such other written and oral arguments as may be presented to the  
 17 Court.

## 18 **BACKGROUND OF THE ACTION**

19 Six related cases, *Leone v. Luminent Mortgage Capital, Inc., et al*, No. C-07-04073-  
 20 PJH (commenced on August 8, 2007), *Rosenbaum Capital, LLC v. Luminent Mortgage*  
 21 *Capital, Inc., et al.*, No. C-07-04096-PJH (commenced on August 9, 2007), *Ira v. Luminent*  
 22 *Mortgage Capital, Inc., et al.*, No. C-07-04140-PJH (commenced on August 10, 2007),

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 27 <sup>2</sup> See the supporting Declaration of James S. Notis (the "Notis Decl."), Ex. A. Although  
 28 the certifications list transactions outside of the Class Period, only class period purchases were  
 used in estimating the Sharenow Group's losses.

1 *Greenberg v. Luminent Mortgage Capital, Inc., et al.*, No. C-07-04141-PJH (commenced on  
2 August 13, 2007), *PEM Resources, LP v. Luminent Mortgage Capital, Inc., et al.*, No. C-07-  
3 04140-PJH (commenced on August 15, 2007), and *Metzger v. Luminent Mortgage Capital,*  
4 *Inc., et al.*, No. C-07-04686-PJH (commenced on September 11, 2007), have been filed  
5 alleging securities fraud claims against Luminent and certain of its officers and directors for  
6 overlapping class periods.<sup>3</sup> Those cases were then consolidated by the Court on October 10,  
7 2007.  
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9 Defendant Luminent is a real estate investment trust that invests primarily in the United  
10 States agency and other single-family, adjustable-rate and fixed-rate, mortgage-backed  
11 securities. Its common stock trades on the New York Stock Exchange under the ticker symbol  
12 “LUM.” Throughout the Class Period, defendants represented to investors that the Company  
13 was fully liquid, that it was not exposed to the prevailing market liquidity squeeze, and that its  
14 dividend was safe, when in fact it was vulnerable to margin calls.  
15

16 On August 6, 2007, defendants announced that the Company was cancelling the  
17 payment of its dividend after it had been hit by many margin calls as the secondary mortgage  
18 market seized up. Just two weeks earlier, defendants announced that the Company was in solid  
19 financial condition, that it was not exposed to the extremities of the market, and that its  
20 dividend was secure. Before the August 6, 2007 announcement, the Company’s shares were  
21 trading at \$5.70 per share. In response to the announcement, Luminent’s share price dropped  
22 to \$3.75 before trading was suspended. When trading resumed, Luminent’s share price  
23 reopened at \$0.50 on August 7, 2007, a drop of over 85%. The market had acknowledged, in a  
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26 <sup>3</sup> The *Rosenbaum Capital LLC*, *Greenberg*, *PEM Resources LP*, and *Metzger* cases  
27 assert a class period of October 10, 2006 through August 6, 2007; the *Ira* case asserts a class  
28 period of May 10, 2007 through August 6, 2007; and the *Leone* case asserts a class period of  
July 24, 2007 through August 6, 2007.

1 brutal fashion, that defendants' representations during the Class Period concerning the  
2 Company's liquidity and the security of its dividend were patently untrue.

3 The complaints allege that defendants were motivated to and did conceal the true  
4 operational and financial condition of Luminent, and materially misrepresented and failed to  
5 disclose the conditions that were adversely affecting Luminent throughout the Class Period,  
6 because the scheme enabled defendants to artificially inflate the price of Company shares by  
7 deceiving the investing public regarding Luminent's business, operations, management and the  
8 intrinsic value of Luminent common stock, thereby allowing them to maintain their lucrative  
9 executive positions and salaries. Thus, Luminent and certain of its officers and directors  
10 (collectively, "Defendants") violated the Exchange Act as a result of Defendants' false and  
11 misleading statements and omissions, which artificially inflated the price of Luminent stock  
12 during the Class Period, causing harm to Luminent investors. By issuing materially false and  
13 misleading statements that artificially inflated Luminent's stock price, defendants violated the  
14 federal securities laws, particularly Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C.  
15 §§78j(b) and 78t(a), and Rules 10b-5 and 14a-9 promulgated thereunder by the Securities and  
16 Exchange Commission ("SEC"), and 17 C.F.R. §240.10b-5.

19 **I. THE SHARENOW GROUP SHOULD BE APPOINTED LEAD PLAINTIFF**

20 **A. The Legal Requirements Under The Exchange Act**

21 The Exchange Act, as amended by the PSLRA, sets forth procedures for the  
22 appointment of lead plaintiffs to oversee class actions brought under the Exchange Act. Within  
23 20 days after the date on which a class action is filed, the plaintiff or plaintiffs shall cause to be  
24 published, in a widely circulated national business-oriented publication or wire service, a  
25 notice advising members of the purported plaintiff class: (i) of the pendency of the action, the  
26 claims asserted therein, and the purported class period; and (ii) that, not later than 60 days after  
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the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class. *See* 15 U.S.C. §78u-4(a)(3)(A)(i). The Court is then directed to consider all motions by plaintiffs or purported class members to appoint lead plaintiffs filed in response to any such notice. *See* 15 U.S.C. §78u-4(a)(3)(B)(i). Pursuant to 15 U.S.C. §78u-4(a)(3)(B)(i), the Court “shall” appoint “the presumptively most adequate plaintiff” to serve as lead plaintiff and shall presume that plaintiff is the person, or group of persons, that:

- (aa) has either filed the complaint or made a motion in response to a notice...;
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class
- (cc) otherwise satisfies the requirements of *Rule 23 of the Federal Rules of Civil Procedure*.

*See also Carson v. Clarent Corp.*, No. C 01-03361 CRB, 2001 WL 1782712, at \*1 (N.D. Cal. Dec. 14, 2001); *In re Surebeam Corp. Sec. Litig.*, No. 03 CV 1721 JM (POR), 2004 WL 5159061, at \*2 (S.D. Cal. Dec. 31, 2004).

The Ninth Circuit Court has explained that the PSLRA “provides a simple three-step process for identifying the lead plaintiff[.]” *See In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). “The first step consists of publicizing the pendency of the action, the claims made and the purported class period.” *Id.* (citation omitted). In the second step, “the district court must consider the losses allegedly suffered by the various plaintiffs before selecting as the “presumptively most adequate plaintiff” – and hence the presumptive lead plaintiff – the one who ‘has the largest financial interest in the relief sought by the class.’” *Id.* at 729-30 (“[T]he district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit.”). Third, the court must “give other plaintiffs an

1 opportunity to rebut the presumptive lead plaintiff's showing that it satisfies Rule 23's  
2 typicality and adequacy requirements." *Id.* (citation omitted).

3 **B. The Sharenow Group Has Complied with the Legal Requirement of the**  
4 **Exchange Act**

5 Plaintiff in the *Leone* action caused notice to be published by a press release issued on  
6 August 8, 2007, announcing that a securities class action had been filed against the defendants  
7 herein, and advising purchasers of Luminent securities that they had until October 8, 2007 to  
8 file a motion to be appointed lead plaintiff. *See* Notis Decl., Ex. B. Pursuant to the provisions  
9 of the PSLRA, and within the requisite time frame after publication of the required notice, the  
10 Sharenow Group timely moves this Court to be appointed Lead Plaintiff on behalf of all  
11 members of the class. In addition, and pursuant to the requirements of the PSLRA, each  
12 member of the Sharenow Group has signed a certification stating that he is familiar with the  
13 factual and legal issues alleged in the case and willing to serve as the representative plaintiff on  
14 behalf of the Class. *See* Notis Decl., Ex. A. Accordingly, the Sharenow Group has satisfied  
15 the individual requirement of 15 U.S.C. 78u-4(a)(3)(B) and is entitled to have its application  
16 for appointment as Lead Plaintiff and selection of Lead Counsel as set forth herein, considered  
17 and approved by the Court.

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20 **C. The Sharenow Group's Large Financial Interest in the Action**

21 The PSLRA establishes a rebuttable presumption that the most adequate plaintiff is the  
22 person who "has the largest financial interest in the relief sought by the class," and who also  
23 satisfies the requirements of Fed. R. Civ. P. 23. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). This  
24 presumption can be rebutted by proof that the presumptively most adequate plaintiff "will not  
25 fairly and adequately protect the interests of the class" or is "subject to unique defenses that  
26 render such plaintiff incapable of adequately representing the class." 15 U.S.C. §78u-  
27  
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4(a)(3)(B)(iii)(II); *Steiner v. Aurora Foods, Inc.*, No. C 00-602 CW, 2000 WL 33911305, at \*2 (N.D. Cal. June 5, 2000).

Here, the Sharenow Group suffered losses of approximately \$410,000 as a result of their purchases of Luminent common stock during the Class Period. *See* Notis Decl., Ex. A. Such losses are significant for individual investors such as the Sharenow Group and provide strong financial incentives for the members of the group to properly pursue the claims in the Action on behalf of the Class.

#### **D. The Sharenow Group Also Satisfies the Requirements Of Rule 23**

The PSLRA requires that the lead plaintiff must satisfy the requirements of Fed. R. Civ. P. 23. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the claims of class representatives, Fed. R. Civ. P. 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are no questions of law or fact common to the class; (3) such claims are typical of those of the class; and (4) the representatives will fairly and adequately protect the interests of the class. For purposes of a motion to appoint lead plaintiff pursuant to the PSLRA, however, “the prospective lead plaintiff need only make a *prima facie* showing that it meets the typicality and adequacy factors.” *Schrivver v. Impac Mortg. Holdings, Inc.*, No. SACV 06-31 CJC (RNBx), 2006 U.S. Dist. LEXIS 40607, at \*16 (C.D. Cal. Mar 2, 2006) (citation omitted); *see also Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 666 (C.D. Cal. 2005).

##### **1. The Sharenow Group’s Claims are Typical of the Claims of the Class**

The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied where the named representative’s claims have the “same essential characteristics as the claims of the class at large.” *Danis v. USN Communs., Inc.*, 189 F.R.D. 391, 395 (N.D. Ill. 1999) (citation omitted). “A claim is typical if it arises from the same event or course of conduct that gives rise to claims of other class members and all claims are based on the same legal theory.” *Id.* (citation



omitted). Indeed, the “similarity of legal theory may control even where factual distinctions exist between the claims of the names representatives and the other class members.” *Id.* (citation omitted); *see also Schlagal v. Learning Tree Int’l*, No.: CV 98-6384 ABC (Ex), 1999 WL 672306, at \*3 (C.D. Cal. Feb. 23, 1999) (“The party seeking class certification will satisfy Rule 23(a)(3)’s typicality requirement if the representatives’ claims stem from the same event or course of conduct as other class members’ claims and are based on the same legal theory as the absent members.”).

Here, the Sharenow Group satisfies the typicality requirement of Fed. R. Civ. P. 23(a) because they (1) purchased or acquired Luminent stock on the open market during the proposed class period; (2) at prices artificially inflated by the false and misleading statements and/or omissions by defendants; and (3) suffered damages as a result. Indeed, the Sharenow Group’s claims are substantially similar, if not identical, to those of other Class members who invested in Luminent stock during the class period and sustained losses resulting from the alleged misrepresentations.

## 2. The Sharenow Group Will Fairly and Adequately Represent the Interests of the Class

The adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4) is satisfied where it is established that a representative party “will fairly and adequately protect the interest of the class.” As the Ninth Circuit has held:

The Ninth Circuit has held that representation is “adequate” when counsel for the class is qualified and competent, the representative’s interests are not antagonistic to the interests of absen[t] class members, and it is unlikely that the action is collusive.

*Takeda*, 67 F. Supp. 2d at 1137 (citing *In re Northern Dist. Of Cal., Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982)); accord *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The class representative must also have “sufficient

1 interest in the outcome of the case to ensure vigorous advocacy.” *Takeda*, 67 F. Supp. 2d at  
2 1137 (citation omitted).

3 The Sharenow Group meets the adequacy requirement, as it will effectively manage  
4 this litigation and will vigorously represent the interest of all Class members. Specifically, (1)  
5 the group’s interests are aligned with, and not adverse to those of the Class; (2) the group has  
6 obtained qualified and experienced counsel; and (3) the members of the group have submitted  
7 certifications stating their willingness to assume the responsibilities of a class representative.  
8

9 **II. THE COURT SHOULD APPROVE THE SHARENOW GROUP’S SELECTION**  
10 **OF LEAD AND LIAISON COUNSEL**

11 The PSLRA vests authority in the lead plaintiff to select lead counsel, subject to  
12 approval by the Court. 15 U.S.C. §78u-4(a)(3)(B)(v); *Osher v. Guess?*, No. CV 01-00871 LEB  
13 (RNBx), 2001 WL 861694, at \*4 (C.D. Cal. April 26, 2001). The Court should only interfere  
14 with lead plaintiff’s selection when necessary “to protect the interests of the class.” 15 U.S.C.  
15 § 78u-4(a)(3)(B)(iii)(II)(aa).

16 Here, the Sharenow Group has selected the law firms of Gardy & Notis, LLP and  
17 Faruqi & Faruqi, LLP to serve as Lead Counsel for the Class and Audet & Partners, LLP to  
18 serve as Liaison Counsel for the Class. These firms are highly experienced in the areas of class  
19 actions, and have successfully prosecuted numerous securities fraud class actions and obtained  
20 excellent recoveries on behalf of defrauded investors. *See* Notis Decl., Ex. C. Thus, the Court  
21 may be assured that by approving the Sharenow Group’s choice of Lead Counsel and Liaison  
22 Counsel, the Class will receive the highest caliber of legal representation.  
23

24 **III. CONCLUSION**

25 For all of the foregoing reasons and based on all pleadings and proceedings herein,  
26 Movant respectfully requests that the Court appoint the members of the Sharenow Group as  
27 lead plaintiffs and approve the group’s selection of Gardy & Notis, LLP and Faruqi & Faruqi,  
28

1 LLP as Lead Counsel for the Class and Audet & Partners, LLP as Liaison Counsel for the  
2 Class, and grant Movant such other and further relief as the Court may deem appropriate.

3 Dated: October 17, 2007

**AUDET & PARTNERS, LLP**

5 By: \_\_\_\_\_/s/

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